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**UNITED STATES DISTRICT COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Z.B., a minor, and J.B., a minor, by  
their guardian, S.S., and S.S., an  
individual,

Plaintiffs,

vs.

DELTA AIR LINES, INC.,  
BRIAN PATRICK DURNING,  
and DOES 1 through 5, inclusive,

Defendants.

Case No. 2:24-cv-02178-FLA (DFMx)

**DECLARATION OF  
JESSICA R. LOBIS BUCKWALTER  
IN SUPPORT OF PLAINTIFFS'  
MOTION TO REMAND ACTION  
TO STATE COURT**

**DECLARATION OF JESSICA R. LOBIS BUCKWALTER**

I, Jessica R. Lobis Buckwalter, declare as follows:

1. I am an attorney, duly licensed to practice law in the State of California and am a member in good standing of the bar of the State of California and of this Court. I am a partner with the law firm of Lewis Baach Kaufmann Middlemiss PLLC, counsel of record for Plaintiffs Z.B., J.B., and S.S. (“Plaintiffs”) in this action. The facts stated herein are within my personal knowledge and if called upon to testify, I can truthfully and competently do so as to all matters herein.

2. I make this declaration in support of Plaintiffs’ Motion to Remand Action to State Court.

3. On January 30, 2024, Plaintiffs commenced the instant action in Los Angeles Superior Court against Delta Air Lines, Inc. (“Delta”), Brian Patrick Durning (“Durning”), and Does 1 through 5 for claims of (1) Intentional Infliction of Emotional Distress; (2) Gross Negligence; (3) Negligence; (4) Negligent Infliction of Emotional Distress; (5) Violation of Business and Professions Code § 17200; (6) Assault; (7) Sexual Battery (Civil Code § 1708.5); (8) Battery; and (9) Intentional Infliction of Emotional Distress. The Case Number assigned to the case was 24TRCV00333.

4. On February 16, 2024, the Los Angeles Superior Court for the State of California issued the Summons for Defendants Delta and Brian Patrick Durning. Delta was served with a copy of the Complaint and Summons on February 20, 2024. A true and correct copy of the Proof of Service on Delta is attached hereto as **Exhibit “1.”**

5. On February 20, 2024, my firm used the Federal Bureau of Prisons inmate locator (<https://www.bop.gov/inmateloc/>) to locate Durning. According to that database, Durning was incarcerated at the FCI Petersburg Medium security correctional facility in Prince George, Virginia (“FCI Petersburg”).

6. Several attempts were made to contact FCI Petersburg to determine the

1 procedure for serving an inmate incarcerated at the facility. On February 23, 2024,  
2 I learned that FCI Petersburg required that service be made through the use of the  
3 Sheriff's Office. That same day, my firm engaged Capitol Process Services, Inc.  
4 ("Capital Process") and requested that they transmit the Summons and Complaint  
5 to the local Sheriff's Office in Prince George, Virginia, for service on Durning.

6 7. On March 1, 2024, the Sheriff's Department for Prince George County  
7 of Virginia attempted to serve Durning with the Complaint and Summons but were  
8 unable to do so because Durning had been moved to a different facility. A true and  
9 correct copy of Proof of Non-Service is attached hereto as **Exhibit "2."** The Proof  
10 of Non-Service is stamped: "RECEIVED PRINCE GEORGE SHERIFF'S DEPT.  
11 FEB 27, 2024."

12 8. On March 5, 2024, I learned that, according to the Bureau of Prisons  
13 website, Durning was moved to and located at the FCI Fort Dix correctional facility  
14 in Fort Dix, New Jersey ("FCI Fort Dix"). FCI Fort Dix required that service be  
15 made through the use of the Sheriff's Office and Capital Process was instructed to  
16 follow the FCI Fort Dix service requirements for serving Durning with the  
17 Summons and Complaint.

18 9. On March 6, 2024, Capitol Process transmitted the documents for  
19 service to the Sheriff's office in New Jersey. My firm was told that the Sheriff's  
20 Office makes attempts for service at FCI Fort Dix once or twice a month.

21 10. On March 20, 2024, Durning was served with the Complaint and the  
22 Summons issued by the Los Angeles Superior Court for the State of California. The  
23 Proof of Service is stamped: "RECEIVED BURLINGTON COUNTY SHERIFF  
24 2024 MAR-7 A 10:10." A true and correct copy of the Proof of Service on Durning  
25 is attached hereto as **Exhibit "3."**

26 11. On March 29, 2024, the Complaint and federal Summons for Durning  
27 were sent to Capitol Process and they were instructed to transmit the documents to  
28 the Sheriff's Office in Burlington County, New Jersey, and request that they be

1 served on Durning at FCI Fort Dix. It is my understanding that a deputy from the  
2 Burlington County Sheriff's Office will likely go to FCI Fort Dix the week of April  
3 22, 2024 or April 29, 2024 and attempt to serve Durning.

4 12. Attached hereto as **Exhibit "4"** is a true and correct copy of excerpts  
5 of the June 22, 2023, redacted transcript of the jury trial before the Honorable  
6 Wendy W. Berger, United States District Judge in *United States of America v. Brian*  
7 *Patrick Durning*, Case No. 6:22-cr-00102-WWB-RMN-1 (U.S.D.C. Middle  
8 District, Florida, Orlando Division). Exhibit "4" contains police officer Brian Pina's  
9 testimony about his interactions with Durning on June 24, 2022 and the body  
10 camera footage of those interactions. That body camera footage was admitted into  
11 evidence at the trial as Government Exhibit Nos. 41A and 41E. (Tr. at 19:19-24:11).

12 13. Attached hereto as **Exhibit "5"** are true and correct copies of images  
13 captured from Government Exhibit No. 41A.

14 14. Attached hereto as **Exhibit "6"** are true and correct copies of images  
15 captured from Government Exhibit No. 41E.

16 15. Attached hereto as **Exhibit "7"** are true and correct copies of excerpts  
17 from the transcript of the June 24, 2022, Initial Appearance Hearing before the  
18 Honorable Leslie R. Hoffman Price, United States Magistrate Judge in *United States*  
19 *of America v. Brian Patrick Durning*, Case No. 6:22-mj-1656 and Case No. 6:22-  
20 cr-102-WWB-DAB (U.S.D.C. Middle District, Florida, Orlando Division).

21 16. Attached hereto as **Exhibit "8"** is a true and correct copy of Order  
22 Setting Conditions of Release dated June 24, 2022, issued by United States  
23 Magistrate Judge Leslie Hoffman Price in *United States of America v. Brian Patrick*  
24 *Durning*, Case No. 6:22-mj-1656 (U.S.D.C. Middle District, Florida, Orlando  
25 Division) (Dkt. 10) and signed and acknowledged by Durning. The Order, on pages  
26 2 and 7, shows Durning's residence and address as 2044 El. Molino Ave., Altadena  
27 CA 91001.

28 17. Attached hereto as **Exhibit "9"** is a true and correct copy of license

1 information from the records of the State of California’s Department of Real Estate  
2 (<https://www2.dre.ca.gov/PublicASP/pplinfo.asp>) showing that Durning was issued  
3 a Real Estate Salesperson license, ID No. 02122687, on May 8, 2021 that does not  
4 expire until May 7, 2025.

5 18. Attached hereto as **Exhibit “10”** is a true and correct copy of  
6 Durning’s LinkedIn Profile as of March 25, 2024.

7 19. Attached hereto as **Exhibit “11”** is a true and correct copy of Family  
8 Law Financial Affidavit (Long Form) filed in the Circuit Court of the Twentieth  
9 Judicial Circuit in and for Lee County Florida on October 15, 2022 in the matter *In*  
10 *Re: The Marriage of Marian Fernandes Durning and Brian Patrick Durning*, Case  
11 No. 22-DR-00519.

12 20. Attached hereto as **Exhibit “12”** are true and correct copies of  
13 excerpts from the redacted transcript of Sentencing on September 26, 2023, before  
14 the Honorable Wendy W. Berger, United States District Judge in *United States of*  
15 *America v. Brian Patrick Durning*, Case No. 6:22-cr-00102-WWB-RMN-1  
16 (U.S.D.C. Middle District, Florida, Orlando Division).

17 21. On April 3, 2024, I received a telephone call from Delta’s counsel in  
18 connection with this Court’s Order to Show Cause Why Action Should Not Be  
19 Remanded for Lack of Subject Matter Jurisdiction (“Order”). During that call, I  
20 advised Delta’s counsel that in addition to responding to the Order concerning the  
21 amount in controversy, and as noted in Plaintiff’s Disclosures, Plaintiffs were  
22 planning on filing a motion to remand (“Motion”) on the grounds that there was not  
23 complete diversity because Durning and Plaintiffs’ are California citizens. Delta’s  
24 counsel and I met and conferred on proposed stipulations in connection with both  
25 the Order and the Motion but were unable to reach agreement.

26 22. On April 11, 2024, I met and conferred with Delta’s counsel in  
27 connection with Plaintiff’s Motion. The parties were unable to reach agreement and  
28 are at an impasse.

1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct.

3 Executed this 12th day of April 2024 in the District of Columbia.

4  
5 /s/ Jessica R. Lobis Buckwalter

6 Jessica R. Lobis Buckwalter  
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